



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905

[Doc. No. AMS-SC-19-0008; SC19-905-1 FR]

**Oranges, Grapefruit, Tangerines, and Pummelos Grown in
Florida; Establishment of Reporting Requirements and New
Information Collection**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Citrus Administrative Committee (Committee) to establish reporting requirements under the Federal marketing order for oranges, grapefruit, tangerines, and pummelos grown in Florida. This action requires Florida citrus handlers who handle citrus grown within the production area to register with the Committee.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: Jennie.Varela@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. Part 905 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of producers and handlers of citrus operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant

regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order, is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on

the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes handler reporting requirements under the Order. This action requires Florida citrus handlers to register annually with the Committee. This will allow the Committee to verify citrus handler information and assist with the administration of the Order, including compliance. These changes were unanimously recommended by the Committee at a public meeting on November 14, 2019.

Section 905.7 provides the authority to require handlers to be registered with the Committee pursuant to rules recommended by the Committee and approved by the Secretary. This action uses this authority to establish a new § 905.107 in the administrative provisions of the Order, which requires Florida citrus handlers to register with the Committee at the beginning of each fiscal year and establishes the requirements for registration. It also requires that handlers be registered and obtain the Committee's certification as a registered handler to ship any citrus outside the production area.

A final rule published in the *Federal Register* on March 1, 2016, (81 FR 10451) amended the Order to, in part, provide the authority to the Committee to require handlers to register with the Committee. Based on the formal

rulemaking hearing record, the Committee recommended this action to provide an accurate and timely record of handlers for the purposes of fostering more efficient communication with handlers and strengthening the compliance provisions of the Order. The addition of this authority, along with the other amendments included in the 2016 amendatory action, were supported by 96 percent of the growers voting and by 99 percent of the volume voted in the amendatory grower referendum.

The Committee met on November 14, 2019, and discussed establishing a requirement for handlers to register with the Committee. The issue had been raised over the course of previous meetings and Committee members recognized the need to maintain an accurate list of handlers in operation for the purposes of administering the Order and communicating with the industry. The Committee believes requiring handlers to register with the Committee at the beginning of each fiscal period will provide current and accurate handler information, improve communication between the Committee and the handlers, and assist with administering the Order, including compliance.

Currently, the Committee depends on third-party handler data from the Florida Department of Agriculture and Consumer Services (FDACS). FDACS licenses handlers

pursuant to a State program and carries out the inspections required by the Order. The Committee contracts with FDACS annually to provide handler data and shipment information used to calculate handler assessments. However, given the continuing changes in the industry, and the timing of when this information is collected by FDACS, it is not always current and accurate.

During the above-mentioned Committee meetings, participants discussed that consolidation and other changes within the Florida citrus handler community have made it difficult for the Committee to maintain accurate information. Implementing the handler registration in the Order will assist the Committee in its administration of the Order by updating handler contact information each fiscal period.

In recent years, citrus greening has significantly reduced Florida's fresh citrus production. For fiscal year 2012-2013, Committee data indicate fresh citrus production totaled 5.9 million boxes and was being handled by 45 handler businesses. By fiscal year 2018-2019, fresh citrus production dropped to 4.5 million boxes handled by approximately 20 handlers. These numbers obtained from the Committee represent a 24-percent decline in fresh

production and a 60-percent decline in the number of handlers over a 5-year period.

Due to the rapid consolidation and changing resources within the fresh citrus industry, the Committee is concerned that FDACS may, at some point, stop collecting and providing handler information. Implementing a handler registration requirement will serve as an efficient means to obtain accurate and timely handler data and assist the Committee in administering the Order by relying on its own information and resources.

In accordance with the registered handler requirements, handlers will need to apply for registration with the Committee prior to beginning of each fiscal year on forms provided by the Committee. The application requires handler information, including: The address for each packing facility; contact information (including telephone and email if available); and handler business classification as an individual, partnership, corporation or cooperative. Handlers will submit this form to the Committee no later than August 1 of each fiscal period.

To meet the requirements to become a registered handler, the handler's facilities need to be in the production area in permanent, nonportable buildings with nonportable equipment for grading, sizing, washing and

packing Florida-grown citrus. Additionally, each handler will be annually inspected by the Committee staff or its authorized agents to verify compliance with these requirements. The Committee indicated all current handlers already meet these criteria. Committee staff will also verify that all assessments, reporting, and any other Order requirements have been met by the handler prior to approval of the application. If the applicant meets all of the above criteria, the applicant will be certified as a registered handler and be notified in writing by email or mail.

The Committee also agreed that the registered handler requirement will assist with administering compliance under the Order, including encouraging the timely payment of assessments. While the Committee and industry are not currently experiencing major compliance issues, given the ongoing changes to the industry and resource allocation, the Committee believes unforeseen compliance issues may arise. The handler registration requirement will serve as a preemptive measure for compliance and enforcement.

With this change, the Committee will be able to cancel or deny a handler's registration certification, for good cause, with approval of the Secretary. Should a handler fail to pay assessments within 90 days of the date of

invoice, fail to provide required reports, or no longer have adequate facilities, the Committee will have the authority to cancel a registered handler's certification with the approval of the Secretary. Under the Committee's compliance plan, Committee staff currently refers cases of nonpayment of assessments to USDA for possible enforcement action at 60 days after the invoice is issued. The Committee determined that allowing an additional 30 days before cancellation of registration will afford handlers sufficient notice and opportunity to comply with the assessment requirements. The enforcement process for failure to submit required reports is similar.

Should a handler ship fruit without inspection, the handler's certification will be cancelled for a minimum of two weeks. In this type of situation where there is no opportunity to correct the violation, the Committee determined that a brief cancellation of certification was the most appropriate penalty. Handlers could remain in business but will not be able to ship regulated citrus out of State. The time period of cancellation could be extended, up to the maximum of the remainder of the shipping season, with the approval of the Secretary, if the violation is more serious or repetitive.

If a handler's certification is cancelled, the Committee will notify the handler in writing outlining the effective date and the reason(s) for the cancellation. If the handler corrects the deficiencies that resulted in cancellation, and notifies the Committee in writing of the correction, the Committee will recertify the handler after verification of compliance. If the handler opts to appeal the cancellation, the handler may do so by appealing to the Secretary.

If a handler is not certified as a registered handler, inspection certificates issued for lots handled by that handler will include a statement to that effect. The inspection certificate for all such lots will read "Fails to meet the requirements of Marketing Order 905 because the handler is not a registered handler." These failing certificates will be issued, regardless of the grade, size or container of the citrus inspected. The Committee will keep FDACS apprised of each handler's certification status.

The FDACS Office of Agricultural Law Enforcement releases citrus shipments for interstate commerce only if the inspection certificates indicate the shipments meet the Order's requirements. Thus, handlers not certified as a registered handler by the Committee will not be able to ship regulated citrus outside of the regulated area. This

should serve as a strong tool to encourage compliance with the Order requirements, helping the industry to avoid potential compliance issues moving forward, or to address compliance issues without having to move to other enforcement actions.

Any handler who is denied a registered handler certificate or has a registered handler certificate cancelled will be able to appeal to the Secretary for consideration. An appeal must be submitted in writing to the Secretary within 90 days of the denial. After the appeal request is reviewed and considered by the Secretary, the handler will be notified of the Secretary's decision in writing.

This action requires that all Florida citrus handlers register with the Committee annually. Establishing this handler registration requirement will help facilitate operations under the Order and assist with compliance, including ensuring that product is correctly inspected, and assessments are paid in a timely manner.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact

of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought through group action of essentially small entities acting on their own behalf.

There are approximately 20 handlers of Florida citrus who are subject to regulation under the Order and approximately 500 citrus producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$30,000,000, and small agricultural producers are defined as those having annual receipts of less than \$1,000,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS), the industry, and the Committee, the weighted average free on board price for fresh Florida citrus for the 2018-19 season was approximately \$16.69 per carton with total shipments of around 9 million cartons. Using the number of handlers, the majority of handlers have average annual receipts of less than \$30,000,000 (\$16.69

times 9,023,704 cartons equals \$150,605,620 divided by 20 handlers equals \$7,530,281 per handler).

In addition, based on the NASS data, the weighted average grower price for the 2018-19 season was estimated at \$11.05 per carton of fresh citrus. Based on grower price, shipment data, and the total number of Florida citrus growers, the average annual grower revenue is below \$1,000,000 (\$11.05 times 9,023,704 million cartons equals \$99,711,929 divided by 500 growers equals \$199,424 per grower). Thus, the majority of Florida citrus handlers and growers may be classified as small entities.

This rule establishes handler reporting requirements in the Order. This action requires Florida citrus handlers to register annually with the Committee. This will allow the Committee to collect information to verify who is handling Florida citrus and will be used to assist with administering the Order, including compliance. This rule establishes a new § 905.107 in Subpart B, Administrative Requirements, of the Order using the authority provided in § 905.7.

It is not anticipated that this change will result in any significant cost to the industry. Requiring handlers to register with the Committee will impose an increase in the reporting burden on all Florida citrus handlers.

However, the information requested is readily available and will only be required to be submitted once a year.

Regarding the other requirements to qualify as a registered handler, such as nonportable buildings and having the necessary equipment to prepare fruit for market, all current handlers already meet these requirements.

Consequently, no additional cost would be needed to comply with the requirements to be a registered handler.

Should a handler fall out of compliance with Order requirements and lose its registered handler status, there could be some cost relative to not being able to ship regulated citrus outside of the regulated area. However, such a handler will still be able to market fruit within the regulated area and be able to address and rectify the problems that resulted in the cancellation of its registered handler status. Therefore, these costs should be minimal, and only impact handlers that have failed to comply with the requirements.

This action will assist the Committee in administering compliance with the Order, including the timely collection of assessments. The benefits of this rule are expected to be equally available to all citrus growers and handlers, regardless of their size.

The Committee discussed the alternative of not establishing a registered handler requirement but determined that obtaining current and accurate handler information and having another enforcement tool under the Order are important.

The Committee considered multiple options regarding the potential problem of a handler shipping fruit without inspection. The Committee discussed cancelling a handler's certification indefinitely or for the rest of the fiscal period. However, the Committee recognized that there could be varying degrees of noncompliance with the inspection requirement. The Committee determined that the two-week cancellation minimum will serve as an appropriate deterrent and afford the Committee the flexibility to extend that period up to the maximum of the end of the shipping season, if the handler repeatedly violates the inspection requirements or any other requirements of the Order.

The Committee also discussed several options regarding the appeals process, ranging from 30 days to appeal to an open-ended process, and whether Committee members should review appeals themselves. After discussion, the Committee determined that a 90-day period from the date of denial or cancellation will allow the handler sufficient time to contact the Committee staff and resolve the issue in a

timely manner. To maintain confidentiality of information, the Committee also agreed that members themselves will not be involved in the appeal review process. The Committee agreed that an appeal could be made to the Secretary. Thus, the alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information requirements have been previously approved by OMB and assigned OMB No. 0581-0189 Fruit Crops. This final rule establishes one new reporting requirement for handlers and will require one new Committee form, which imposes a total annual burden increase of 3.3 hours. Therefore, this rule will impose an increase in the reporting burden for all handlers. The form has been submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Further, the public comments received concerning the proposal did not address the initial regulatory flexibility analysis.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other

information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The 2019 Committee meeting was widely publicized throughout the citrus industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 14, 2019 meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue, and both producer and handler Committee members were able to assist in the development of the recommended form and procedures submitted to USDA.

A proposed rule concerning this action was published in the **Federal Register** on May 7, 2020 (85 FR 27159). Copies of the proposal were sent via email to Committee members and known citrus handlers. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending July 6, 2020, was provided to allow interested persons to respond to the proposal.

Three comments were received. Although the comments do not specifically address the proposed registration of handlers, all three comments generally supported the regulation of the industry. Commenters stated that it was

important for the Committee to regulate growers and handlers of Florida citrus, and that doing so would have a positive impact on quality. There were no comments regarding the information collection burden. Accordingly, no changes will be made to the proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Pummelos, Reporting and recordkeeping requirements, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905 - ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS
GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Add § 905.107 to read as follows:

§ 905.107 Registered handler certification.

Each handler who handles citrus grown in the production area must be certified as a registered handler by the Committee in order to ship such regulated citrus outside of the regulated area. A handler who is certified as a registered handler is a handler who has adequate facilities to meet the requirements for preparing citrus for market, obtains inspection on citrus handled, agrees to handle citrus in compliance with the Order's grade, size and container requirements, pays applicable assessments on a timely basis, submits reports required by the Committee, and agrees to comply with other regulatory requirements on the handling of citrus grown in the production area.

(a) *Eligibility.* Based on the criteria specified in this section, the Committee shall determine eligibility for certification as a registered handler. The Committee or its authorized agent shall inspect a handler's facilities to determine if the facilities are adequate for preparing citrus for market. To be adequate for such purposes, the facilities must be permanent, nonportable buildings located

in the production area with equipment that is nonportable for the proper washing, grading, sizing and packing of citrus grown in the production area.

(b) *Application for certification.* Application for certification shall be executed by the handler by August 1st of fiscal period and filed with the Committee on a form, prescribed by and available at the principal office of the Committee, containing the following information:

- (1) Business name,
- (2) Address of handling facilities (including telephone, email and facsimile number),
- (3) Mailing address (if different from handling facility address),
- (4) Number of years in the citrus business in Florida,
- (5) Type of business entity, and
- (6) Names of senior officers, partners, or principal owners with financial interest in the business.

(c) *Determination of certification.* If the Committee determines from available information that an applicant meets the criteria specified in this section, the applicant shall be certified as a registered handler and informed by written notice from the Committee. Certification is effective for a fiscal period unless the Committee determines, based on criteria herein, that cancellation is

warranted. If certification is denied, the handler shall be informed by the Committee in writing, stating the reasons for denial.

(d) *Cancellation of certification.* A registered handler's certification shall be cancelled by the Committee, with the approval of the Secretary, if the handler fails to pay assessments within 90 days of the invoice date, fails to provide reports to the Committee, or no longer has adequate facilities as described in this section. Cancellation of a handler's certification shall be made in writing to the handler and shall specify the reason(s) for and effective date of the cancellation. Cancellation shall be for a minimum two-week period if a handler is found to be shipping without proper inspection. The Committee shall recertify the handler's registration at such time as the handler corrects the deficiencies which resulted in the cancellation and the Committee or its agent verifies compliance. The Committee shall notify the handler in writing of its recertification.

(e) *Inspection certification.* During any period in which the handling of citrus is regulated pursuant to this part, no handler shall obtain an inspection certifying that the handler's citrus meets the requirements of the Order unless the handler has been certified as a registered

handler by the Committee. Any person who is not certified as a registered handler may receive inspection from the Federal-State Inspection Service, however, the inspection certificate shall state "Fails to meet the requirements of Marketing Order No.905 because the handler is not a registered handler."

(f) *Contrary shipping.* The Committee may cancel or deny a handler's registration if the handler has shipped citrus contrary to the provisions of this part. The cancellation or denial of a handler's registration shall be effective for a minimum of two weeks and not exceed the applicable shipping season as determined by the Committee.

(g) *Appeals.* Any handler who has been denied a handler's registration or who has had a handler's registration cancelled, may appeal to the Secretary, supported by any arguments and evidence the handler may wish to offer as to why the application for certification or recertification should have been approved. The appeal shall be in writing and received at the Specialty Crops Program office in Washington, D.C. within 90 days of the date of notification of denial or cancellation.

Bruce Summers,
Administrator,
Agricultural Marketing Service.

